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IN THE

Supreme Court of the United States

October Term, 1944

No. 160

ELGIN, JOLIET & EASTERN RAILWAY COMPANY,
A CORPORATION,

Petitioner,

vs.

G. W. BURLEY, ET AL.,

Respondents.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE AND BRIEF OF AMICI CURIAE IN SUPPORT OF PETITION FOR REHEARING

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On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

The undersigned hereby move the court for leave to file a brief as *amici curiae* in the above entitled action, and in connection therewith represent to the court as follows:

The issues involved in this case concern the right of collective bargaining representatives of employees to proceed in the adjustment of disputes involving the interpretation or application of collective bargaining agreements, either in conference with employers or through submission thereof to the National Railroad Adjustment Board.

The undersigned are attorneys for the Railway Labor Executives' Association, an association of the chief executive officers of twenty labor organizations who represent for the purpose of collective bargaining the vast majority

of employees of the railroad companies of the United States, and who are parties to collective bargaining contracts with such companies.

There are now pending numerous cases in which the said labor organizations are involved, relative to the interpretation or application of such agreements, which said cases are either in the conference stage or are now pending before the National Railroad Adjustment Board. The rights of the said organizations to proceed in connection with these cases will be determined in this proceeding without opportunity for hearing to them unless the undersigned are permitted to file a brief and express their views herein as *amici curiae*.

Dated at Toledo, Ohio, this 7th day of October, 1945.

FRANK L. MULHOLLAND,
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Toledo 4, Ohio,

CLARENCE M. MULHOLLAND,
741 Nicholas Building,
Toledo 4, Ohio,

WILLARD H. McEWEN,
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Toledo 4, Ohio.

IN THE

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No. 160

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On Writ of Certiorari to the United States Circuit Court of Appeals for the Seventh Circuit

BRIEF OF AMICI CURIAE

Statement of the Case

This case arose out of a dispute between the petitioner and certain of its employees regarding the interpretation and application of a collective bargaining agreement executed by the petitioner and a labor union which has been and is the collective bargaining representative of the craft of employees involved. This dispute was presented for adjustment in conference by the regularly selected officials of the union and a settlement appears to have been made. Subsequently, however, further disagreement arose, and the union submitted the case to the National Railroad Adjustment Board. After hearing, that tribunal held that the settlement made in conference was valid and that the claim should be rejected. This suit was then filed by the individual employees seeking recovery under the original claim. No question appears to have

been raised to the effect that the union was not the properly designated collective bargaining representative, or that the officials had acted otherwise than in good faith.

On these facts the court has held that neither the decision of the Adjustment Board nor the settlement reached in conference was binding upon the individuals who brought this action, unless it could be established that they specifically authorized the union to act for them in reference to this dispute. As we understand the opinion of this court, it is predicated on the proposition that a collective bargaining representative of employees *as such* has no right to proceed to settle a claim for compensation made by an individual employee and growing out of an asserted violation of a collective agreement. This right to proceed is conceived of as resting in the individual only, and any authority which the representative may have with regard to it is considered as being derived from the individual by virtue of some specific act of delegation on his part. These conclusions are drawn by the court from the interpretation which it has made of certain provisions of the Railway Labor Act.

The decision of the court in effect outlaws a method which has been successfully followed for a quarter of a century in the adjustment of disputes of the kind under consideration. Thousands of individual cases have been settled during this period and up to the time of the decision in this case, no one had questioned the authority of the employees' representatives to act in this connection. The existence of such authority has always been considered as an integral and essential part of the collective bargaining process as it has developed under federal regulation. We have no hesitancy in saying to the court that we believe that its decision denying the existence of such authority reduces the potency of collective bargaining as an instrumentality of peace in the railroad industry to a lower level

than that prevailing in 1920. We feel that the court should be advised that since the announcement of its decision the National Railroad Adjustment Board has virtually ceased to function. The adjustment of even simple disputes in conference has been materially impeded and complicated ones have been found to present almost insuperable procedural obstacles. This brief is filed with the deep conviction that the whole process of the orderly adjustment of controversies, which is the fruit of railroad labor legislation obtained after long effort on the part of all concerned, is now in serious jeopardy. The potentialities of this case were not fully recognized by us when it was originally before the court. The decision was, we believe, rendered without the court having before it pertinent information which we are now endeavoring to supply.

It is respectfully submitted that the decision contains certain inherent errors to which we wish to direct the court's attention.

In the ensuing discussion we will show, *first*, that any interpretation of the Railway Labor Act which deprives collective bargaining representatives of any authority to act *as such* in the settlement of disputes regarding the interpretation or application of collective agreements and which restricts their powers in this connection to that of mere agents of individual employees acting upon authorization by and at the pleasure of such employees, is at variance with the legislative history of the Act and is not supported by its specific language; and *second*, that such an interpretation of the statute will raise an insuperable barrier to the orderly adjustment of many disputes between carriers and employees, a result which is contrary to the basic purpose of the statute.

ARGUMENT

I. THE LEGISLATIVE HISTORY AND LANGUAGE OF THE RAILWAY LABOR ACT

Summary Statement of Argument.

The legislative history of those provisions of the Railway Labor Act which deal with the adjustment of disputes concerning the interpretation or application of collective agreements begins with the experiences of the United States Railroad Administration in the years 1918-1920. The orders of the Federal Director General of Railroads during that period recognized the right to proceed in relation to such disputes as being vested *exclusively in the collective bargaining representatives of the employees.* The individual was considered as having no such right. This same idea was carried over and incorporated into the provisions of the Transportation Act of 1920. The decision of the court in this case considers that this original condition has been entirely reversed and that the exclusive right to proceed is now vested in the individual. The court has held that the exercise of this right may be delegated to the collective bargaining representative, but that any authority of the latter exists as the result of such delegation only.

There is nothing in the provisions or in the immediate legislative history of the Railway Labor Acts of 1926 or 1934 to establish that either was intended to bring about any such complete reversal of theory on this point.

Experience of United States Railroad Administration.

When the Federal Director General of Railroads first took office in 1918 he found facing him a complicated and potentially dangerous labor sit-

uation. Employee morale was at low ebb.* Unsettled disputes were numerous and serious. Even at this early date it was recognized that these disputes were of two distinct sorts, amenable to different methods of settlement.

The wage problem was the first to receive attention from the Director General. By his order, it was submitted to a commission known as the Railroad Wage Commission, which issued a comprehensive report of its findings on April 30, 1918. The wage changes recommended by this commission were put into effect with some modifications by General Order No. 27 issued by the Director General. This order, together with the supplements thereto issued from time to time constituted the basis of wage rates during the period of Federal control. Wage changes were made after hearings before a board known as the Board of Railroad Wages and Working Conditions.

These processes and orders, however, did not provide a complete solution for all existing railroad labor problems. As one commentator has stated:

> "The presence of the Board of Railroad Wages and Working Conditions afforded convenient and readily accessible machinery before which requests involving proposed changes in wages, hours, and working conditions could be brought. There was still need for machinery before which minor disputes, those arising out of personal grievances or out of the interpretation and application of the provisions of agreements already in effect, and which could not be settled between carriers and the employees themselves, could be brought." (Wolf, "The Railroad Labor Board," page 50.)

In response to this need certain boards were organized known as Railway Boards of Adjustment. The first of these to be established was Railway Board of Adjustment No. 1, formed by agreement, and pursuant to General

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*Annual Report, William G. McAdoo, Director General of Railroads, 1918, page 4.

Order No. 13 of the Director General. This Board was formed according to the now familiar plan of organization of such boards. It had a bi-partisan membership, composed of representatives of carriers and employees in equal numbers. The Memorandum of Agreement by which it was established contained the following provisions:

> "It is understood, That all controversies growing out of the interpretation or application of the provisions of the wage schedule or agreements which are not promptly adjusted by the officials and the employees on any one of the railroads operated by the Government shall be disposed of in the following manner:
>
> "1. There shall be at once created a commission, to be known as Railway Board of Adjustment No. 1, to consist of eight members, four to be selected by the said regional directors and compensated by the railroads, and one each by the chief executive officer of each of the four organizations of employees hereinbefore named and compensated by such organizations.
>
> "8. The broad question of wages and hours will be considered by the Railroad Wage Commission, but matters of controversies arising from interpretations of wage agreements, not including matters passed upon by the Railroad Wage Commission, shall be decided by the Railway Board of Adjustment No. 1, when properly presented to it.
>
> "10. Personal grievances or controversies arising under interpretation of wage agreements, and all other disputes arising between officials of a railroad and its employees, covered by this understanding, *will be handled in their usual manner by general committees of the employees* up to and including the chief operating officer of the railroad (or someone officially designated by him), when, if an agreement is not reached, *the chairman of the general committee of employees may refer the matter to the chief executive officer of the organization concerned,* and if the contention of the employees' committee is ap-

proved by such executive officer, then the chief operating officer of the railroad and the *chief executive officer of the organization concerned* shall refer the matter, with all supporting papers, to the Director of the Division of Labor of the United States Railroad Administration, who will in turn present the case to the Railway Board of Adjustment No. 1, which board shall promptly hear and decide the case, giving due notice to the chief operating officer of the railroad interested and to the chief executive officer of the organization concerned of the time set for hearing.

"11. No matter will be considered by the Railway Board of Adjustment No. 1 unless officially referred to it in the manner herein prescribed.

"12. In hearings before the Railway Board of Adjustment No. 1, in matters properly submitted for its consideration, the railroad shall be represented by such person or persons as may be designated by the chief operating officer, and the employees shall be represented by such person or persons as may be designated by the *chief executive officer of the organization concerned.*" (Emphasis supplied.)

The method of procedure indicated by this agreement is clear. It was intended that any dispute of the character which could be submitted to the Board was to be first handled in conference "by general committees of employees." If no adjustment was reached, it was to be referred by "the general chairman" of the employees' committee to the "chief executive officer of the organization concerned," and if he considered the employees' claim justified, he was empowered to refer it to the Board. Clearly under this procedure the right to proceed was the *exclusive prerogative* of the collective bargaining representative. Any individual interest was considered as being merged in the collective interest and vested in such representative.

Subsequently, two further boards, known as Railway Boards of Adjustment Nos. 2 and 3 were established (having jurisdiction over other classes of employees) under agreements containing provisions similar to those above outlined. (See General Orders Nos. 29 and 53 of the Director General dated May 31, 1918, and November 13, 1918, respectively.)*

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*In 1918 railroad employees had not selected collective bargaining representatives to the extent that they have today. Accordingly, there were then a considerable number of employees not covered by any one of the Boards of Adjustment established, or not represented by any organization for any purpose. In its Circular No. 3, the Division of Labor of the United States Railroad Administration made provision for the handling of disputes involving such employees. This circular in paragraphs (c) and (e) thereof, provided:

"(c) When employees are represented by Railway Boards of Adjustment, the procedure as to all controversies within the scope of their duties will be as directed in general orders creating such boards. The fact that certain employees are not represented by Railway Boards of Adjustment will in no manner deprive them of any of the benefits accruing from such boards. An assistant to the Director of the Division of Labor has been appointed, and a staff of representatives has been organized, for the especial purpose of rendering the same service to such employees as though represented by a Railway Board of Adjustment. Boards of adjustment have been created by understanding with the larger organizations of employees for the convenience of handling such matters and to relieve the Director of the Division of Labor of adjusting same. It is not practicable to create Railway Boards of Adjustment, except for the larger organizations of employees."

"(e) Personal grievances or controversies arising under interpretation of wage agreements, and all other disputes arising between officials of a railroad and its employees not represented by Railway Boards of Adjustment, will be handled in the usual manner by the individual, his representative, or by committees of employees, up to and including the chief operating officer of the railroad, or officer designated by him, when, if an agreement is not reached, the chairman of the committee of employees and the officer of the railroad will refer the matter to the Director of the Division of Labor, in the same manner as provided in paragraph (d) of this circular."

Reference is made to this circular at this point solely in order that the court may have before it the full historical background of this period and not because we believe that the circular in question contains anything contrary to the conclusions reached in the text. It will be noted that it applied only to employees not represented by any Board of Adjustment and did not purport to govern the handling of disputes over which such boards had authority. The present controversy involves employees who are represented for the purposes of collective bargaining by a labor organization and the dispute is clearly within the jurisdiction of the First Division of the existing Adjustment Board. Thus the reference to individual handling of disputes contained in paragraph (e) quoted above, is not relevant to the basic issue now before the court.

Transportation Act of 1920.

When the railroads were returned to private management in 1920, it seemed necessary to Congress to provide a successor to the administrative machinery which had operated so successfully to preserve labor peace under Federal control. This was sought to be accomplished by the enactment of Title III of the Transportation Act of that year. This statute provided for three steps in the handling of disputes involving the interpretation or application of agreements.* The first step was through conference. This step was common to all types of disputes, for it was provided in Section 301 of the Act:

> "It shall be the duty of all carriers and their officers, employees, and agents to exert every reasonable effort and adopt every available means to avoid any interruption to the operation of any carrier growing out of any dispute between the carrier and the employees or subordinate officials thereof. All such disputes shall be considered and, if possible, decided in conference between *representatives* designated and authorized so to confer by the carriers, or the employees or subordinate officials thereof, directly interested in the dispute. If any dispute is not decided in such conference, it shall be referred by the *parties* thereto to the board which under the provisions of this title is authorized to hear and decide such dispute." (Emphasis supplied.)

The next step contemplated by the statute was through reference of the dispute to a board of adjustment. The

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* The line of demarcation between these and other disputes was not maintained with entire rigidity in the statute. The distinction was rather between wage disputes and others. The former were reserved for special handling. The disputes as to rules, working conditions or grievances were to be handled according to the procedure outlined in the text. These terms were evidently used to include disputes regarding the interpretation or application of agreements as well as other so-called "minor" disputes.

creation of such boards was authorized by Section 302 o the Act*, and their powers outlined in Section 303. Whe employees invoked the services of such a board, it was re quired that such invocation be made (1) * * * "upon th application of the chief executive of any carrier or organi zation of employees or subordinate officials whose member are directly interested in the dispute, (2) upon the writte petition signed by not less than 100 unorganized employee or subordinate officials directly interested in the dispute.' (Section 303) *There was no provision in the statute where by any employee could address such a petition to the board*

Referring back for a moment to Section 301, quoted above, and the provision contained therein that dispute could be referred to the board by "parties," it become apparent that the only party to such a dispute on th employees' side must be either a labor organization or group of unorganized employees, 100 or more in number The individual could not be such a party. Sections 301-30 of the Transportation Act, therefore, clearly contemplated collective action as the exclusive means of procedure by which the employees' side of any dispute could be pre sented to an adjustment board.

The third step provided by this statute for the han dling of disputes of the character here under consideration was by reference of the same to the United State Railroad Labor Board, a tribunal which the statute created. This board had original jurisdiction as to wage controversies and a sort of appellate jurisdiction over other disputes where adjustment boards were unable to agree or where

*"Railroad Boards of Labor Adjustment may be established by agreement between any carrier, group of carriers, or the carriers as a whole, and any employees or subordinate officials of carriers, or organization or group of organizations thereof." (Section 302.)

such boards had not been established.* The right to seek relief from this board was limited so far as employees were concerned in the same manner as was that to invoke the services of an adjustment board, *i.e.*, this right could be exercised only by the chief executive of any organization of employees or upon petition of 100 unorganized employees.

The Transportation Act thus followed the same basic pattern in relation to the adjustment of these disputes as that established by the orders of the Director General. The right to proceed was recognized as reposing exclusively in the group and not the individual.

The practice of the parties under the Transportation Act was in accordance with this same pattern. Various regional boards of adjustment were organized by agreements between the train service organizations and the railroads pursuant to the provisions of Section 302. The following excerpt is quoted from the agreement establishing the Southeastern Regional Board of Adjustment:

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*This jurisdiction was conferred by section 307 of the statute, which read as follows:

"The Labor Board shall hear, and as soon as practicable and with due diligence decide, any dispute involving grievances, rules, or working conditions, in respect to which any Adjustment Board certifies to the Labor Board that in its opinion the Adjustment Board has failed or will fail to reach a decision within a reasonable time, or in respect to which the Labor Board determines that any Adjustment Board has so failed or is not using due diligence in its consideration thereof. In case the appropriate Adjustment Board is not organized under the provisions of section 302, the Labor Board, (1) upon the application of the chief executive of any carrier or organization of employees or subordinate officials whose members are directly interested in the dispute, (2) upon a written petition signed by not less than 100 unorganizd employees or subordinate officials directly interested in the dispute, or (3) upon the Labor Board's own motion if it is of the opinion that the dispute is likely substantially to interrupt commerce, shall receive for hearing, and as soon as practicable, and with due diligence decide, any dispute involving grievances, rules, or working conditions which is not decided as provided in section 301 and which such Adjustment Board would be required to receive for hearing and decision under the provisions of section 303.

"That all disputes growing out of personal grievances or out of the interpretation or application of the schedules, agreements or practices now, or hereafter established on the railroads signatory hereto, which cannot be adjusted by direct conference between *representatives of the individual railroad and its respective employees,* shall be disposed of in the following manner:

"There shall be created as soon as practicable a Railroad Board of Adjustment to be known as 'Train Service Board of Adjustment for the Southeastern Region' (hereinafter referred to as the Board), to consist of eight members; four to be selected by the said railroads, and one each by the chief executive officer of each of the four organizations of employees, hereinbefore named.

"Disputes arising between a railroad and its employees covered by this agreement will be handled in their usual manner *by general committees of the employees* up to and including the chief operating officer of the railroad (or someone officially designated by him), when if an agreement is not reached, *the chairman of the general committee of employees may refer the matter to the chief executive officer of the organization concerned,* and if the contention of the employees' committee is approved by such executive officer, then the chief operating officer of the railroad and the *chief executive officer of the organization concerned* shall refer the matter, with all supporting papers, to the Board, which Board shall promptly hear and decide the case, giving due notice to the chief operating officer of the railroad interested and *to the chief executive officer of the organization concerned,* of the time set for hearing.

"In the event that either party to a dispute declines to become a party to a joint submission, as above provided, then either party may refer the dispute to the Board under such regulations as the Board may prescribe.

> "*On a written petition signed by not less than one hundred unorganized employees* of the classes covered by this agreement, directly interested in the dispute, the Board shall hear and decide any dispute covered by this agreement; provided, that no dispute over an interpretation of an existing agreement, rule or practice which has been agreed to or accepted by the management and *the duly constituted committee representing the employees* parties thereto, shall be considered as a dispute under this agreement." (Emphasis supplied.)*

This agreement recognized the collective and not the individual right as being paramount in the handling of all disputes of this nature.

The above material brings our discussion up to the year 1926, when the original Railway Labor Act was adopted. We submit that at that time, the right to present a dispute involving the interpretation or application of a collective bargaining agreement to conference or to an adjustment board or the United States Railroad Labor Board rested exclusively in the collective representative of organized employees, and in groups where employees were not organized. The individual as such was given no part in the statutory procedure. This court has held in this case that under the present law the situation is exactly the opposite, that the basic right is now the individual's, and that the collective representative must act, if at all, only on his direct authorization. If such a complete reversal of prin-

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* The full text of the above agreement and others establishing similar regional boards of adjustment under the Transportation Act may be found at pages 39-48, inc. of the Appendix of a document entitled "Inquiry of the Attorney General's Committee on Administrative Procedure Relating to the National Railroad Adjustment Board and Historical Background and Growth of Machinery set up for the Handling of Railroad Labor Disputes, 1888-1940." This document was privately published in book form and copies were given to the court in the course of the proceedings in the case of Washington Terminal Company vs. Boswell (No. 28, October Term, 1942) and are doubtless available to the court as part of the record in that case.

ciple has been accomplished it would be natural to expect that fact to be evidenced by clear and unequivocal language in subsequent acts. It is further submitted, however, that an examination of those acts reveals no such language.

Railway Labor Act of 1926. Much has been written in regard to the failures of the Transportation Act of 1920 and but little as to its successes. The statute was indeed shown to have many weaknesses. The United States Railroad Labor Board had a power to decide but not to enforce its decisions. It could thus rouse the antagonism of losing parties by ruling against them but could not overcome that antagonism if they chose not to comply. It could and did establish principles to govern the selection of employee representatives in such manner that they should truly represent employees and be free from the domination of the carriers, but was powerless to prevent the development of company-controlled unions. It was unable to prevent strikes.

The Railway Labor Act of 1926 has been referred to as a "fresh start" in the field of railroad labor legislation. This is entirely correct if we consider only the deficiencies in the Transportation Act above outlined. It is true that the Railway Labor Act cured the anomaly of "unenforceable decisions" by limiting the authority of the newly created Board of Mediation in such manner that it could not decide controversies at all. The company union evil was attacked by definite provisions to the effect that employee representatives were to be selected without interference, influence or coercion by the employer. Cooling off periods were provided in case of threatened strikes, with mediation or investigation by Presidential emergency boards as remedial devices to assist in settling them.

It is not correct, however, to consider the Railway Labor Act of 1926 as a complete break with the immediate

past. The fact is that it borrowed heavily from the Transportation Act wherever that statute had proven itself successful. This was done particularly with respect to those sections of the Act dealing with conferences and adjustment boards which were already established as satisfactory methods of settling disputes regarding the interpretation or application of agreements. These matters were handled in Sections 2 and 3 of the 1926 Act.

Section 2 First and Second provided as follows:

> "First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.
>
> "Second. All disputes between a carrier and its employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carriers and by the employees thereof interested in the dispute."

These two provisions are paraphrases or verbatim reenactments of the provisions of Section 301 of the Transportation Act.

Section 2 Fourth provided that:

> "In the case of a dispute between a carrier and its employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held."

This provision was new. It is to be noted that it reinforced the provisions of Section 2 Second by imposing a specific duty to confer regarding disputes of the types here under consideration, and that *this duty was imposed upon the collective bargaining representatives.*

Certainly, therefore, there is no provision in Section 2 of the 1926 Act which can be relied upon as bringing about such a complete reversal of precedent as to deprive the representative of his preexisting right to proceed to the adjustment of disputes involving interpretation or application of agreements.

Section 3 of the Railway Labor Act of 1926 provided for the establishment of adjustment boards. As under Section 302 of the Transportation Act, their formation was permissive rather than mandatory, but the new section went much further than the old in prescribing the membership, jurisdiction and procedure of such boards if and when formed. Paragraph First (c) of this Section provided as follows:

> "Boards of adjustment shall be created by agreement between any carrier or group of carriers, or the carriers as a whole, and its or their employees.
>
> "The agreement—
>
> (c) Shall provide that disputes between an employee or group of employees and a carrier, growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, that the dispute shall be referred to the designated adjustment board by the parties, or by either party, with a full statement of the facts and all supporting data bearing upon the dispute."

It will be noted that this statute, in prescribing the terms of future agreements, borrowed freely from past agreements establishing adjustment boards, notably from the agreement establishing Railway Board of Adjustment No. 1, and the Southeastern Regional Board of Adjustment, both of which agreements are quoted above. In all fairness it should be noted that certain changes were made. The statute referred to disputes "between *an employee* or group of employees and a carrier." This was the first reference to an employee in the singular. Furthermore, the earlier agreements had contained a provision to the effect that disputes could be referred to adjustment boards if not settled in conference "between representatives of the individual railroad and its respective employees." While this provision was not repeated in Section 3 of the Railway Labor Act, it was incorporated in Section 2 Fourth as above noted. Also the agreements from which we have quoted above establishing various adjustment boards contained provisions to the effect that disputes "will be handled in the usual manner *by general committees of the employees* up to and including the chief operating officer of the railroad." We find that the phrase above italicized was omitted from the 1926 Act. This omission, however, is not significant. The statute's provision that such cases were to be handled "in the usual manner" certainly indicated an intent that the existing practice in this regard was not to be disturbed. That practice was that cases were handled by the organizations which acted as collective bargaining representatives of the employees.

In addition to those provisions noted above which tied in with those of the Transportation Act, or those of agreements establishing earlier adjustment boards, the Railway Labor Act of 1926 incorporated into the law some entirely new provisions whose significance should be noted. The provisions to which we refer were contained in Paragraph

3 First (d) which stated that any agreement establishin an adjustment board:

> "Shall provide that the parties may be hear either in person, by counsel, or by other represent tive, as they may respectively elect, and that ad justment boards shall hear and, if possible, decid promptly all disputes referred to them as provide in paragraph (c). Adjustment boards shall give du notice of all hearings to the employee or employee and the carrier or carriers involved in the dispute.

It has been argued that the provision of this para graph to the effect that "parties" may be heard "in pe son" indicates that individuals may be parties since, is contended, only individuals may appear in person. I interpreting the language used, however, it must be kep in mind that the entire Section 3 of the 1926 Act referre to the prescribed terms of *agreements* establishing adjus ment boards. Thus, when the statute referred to "pa ties," it was obviously referring to the parties to suc agreements and not to the parties to the disputes whic might be submitted to the boards thereby created. Thi is clear from a reference to Paragraph 3 First (h) of th Act, which required that these agreements "shall provid for the portion of expenses to be assumed by the respe tive parties." Obviously the word parties as used in thi paragraph referred to the agencies establishing the board for it cannot be supposed that it was the intention of th Act to provide that the party to each dispute should bea the expenses of the board. It would not be logical to argu that the word as used elsewhere in this same section wa intended to have any different meaning. Thus it appear that the Act must certainly have contemplated that a co lective bargaining representative of employees could be *party* to an adjustment board proceeding in its own righ

Section 3 First (d) above quoted, however, contains the further provision that adjustment boards created thereunder are to give notice of hearings to the "employee or employees and the carrier or carriers involved in the dispute." There has been a great deal of controversy as to the correct interpretation of this language. To anticipate somewhat the chronological course of events, the provision in question was carried over into the Railway Labor Act of 1934 and has been the subject of much discussion by members of the National Railroad Adjustment Board. In general, it may be said that the Board has not interpreted this language as permitting the institution of dispute cases by individuals nor as requiring notice to individuals whose interests are represented before the Board by a collective bargaining representative. Some divisions of the Board have held, however, that where it is made to appear that the interest of some individual employee is adverse to the position taken by the representative, and that such interest arises out of the collective bargaining agreement under consideration (as in cases involving seniority rights), the individual is to be given notice. If he desires, he may then appear in his own behalf in the case. The statutory provision therefore is interpreted by the present Adjustment Board as providing in effect for a right to intervene with notice to the prospective intervenor whose interest is shown to be adverse to the position of the representative. This, we submit, is all that is required in order to give full effect to this language either in the Act of 1934 or that of 1926. We find nothing here which indicates a positive intent on the part of Congress to substitute the individual for the collective bargaining representative as the prime mover in cases before adjustment boards.

To summarize the provisions of the Railway Labor Act of 1926, we conclude that it contains no language which

can be held to have deprived collective bargaining representatives of their pre-existing right to act exclusively in behalf of employees in the adjustment of disputes of this kind. Section 2 First and Second are but paraphrases of an earlier statute which clearly recognizes such an exclusive right. Section 2 Fourth reinforced the right as far as conferences were concerned, but imposed upon the representative a duty to confer. Section 3 contained no language which would justify the conclusion that Congress intended a complete about-face of its former policy. The requirement that disputes be handled "in the usual manner" clearly contemplated a handling by the representative for such was the usual manner of procedure at that time. The reference to "parties" was intended to refer to parties to agreements creating adjustment boards, and these were the carriers, on the one hand, and the collective bargaining representatives on the other. The most that can possibly be said for the Act of 1926 is that it contained provisions for notice of Adjustment Board hearings to individuals "interested" therein. This language has been interpreted as restricted to such an interest as could not be held to be merged in the collective interest of the representative because of its being antagonistic thereto. Hence, we conclude that, while the provision last noticed has been held by some to give limited recognition to individual right in cases involving the interpretation or application of collective agreements, the statute as a whole cannot be construed as establishing such a right in the individual as to enable him to supplant the collective bargaining representative, or to reduce the latter to a mere agent acting, if at all, on individual sufferance.

Railway Labor Act of 1934: When the Railway Labor Act was amended in 1934, it was not the intention of Congress to depart from the principles of the existing statute. The late Honorable Joseph B. Eastman, who sponsored the measure when it was before Congress, made the following statement with regard to the end sought:

> "This Railway Labor Act has now been tried for a period of nearly 8 years. It has served a very useful purpose and has brought about many good results, but experience has shown that it is in need of improvement. The bill before you, S. 3266, proposes such improvements. It does not depart from the general principles of the present Railway Labor Act, but, instead, is designed to reinforce those principles and provide for their more effective application. It seeks not to overturn but to perfect what has been done." (Hearings before Committee on Interstate Commerce, U. S. Senate, 73d Cong., 2d Sess., S. 3266, p. 10.)

A similar thought was expressed in the report of the House of Representatives, approving a similar measure, wherein it was stated that "the bill does not introduce any new principles into the existing Railway Labor Act but it is designed to amend that Act in order to correct the defects which have become evident as a result of 8 years of experience." (House of Representatives Report No. 1944, 73d Cong., 2d Sess., page 2.)

The intent of the framers of the statute not to alter basic legal rights, duties and principles already existing but to provide rather for their more complete effectuation by means of improved enforcement agencies is particularly clear with reference to those features of the 1934 Act which deal with disputes regarding the interpretation and application of agreements.

Section 2, First, Second and Fourth of the Railwa Labor Act of 1926 above referred to were copied verbati into the amended Act of 1934, as Sections 2, First, Secon and Sixth thereof. Obviously if the new statute containe any revolutionary change from the principles of its pred cessors, that change cannot be attributed to these par graphs.

Section 2 Fourth of the 1934 statute was obvious intended to reinforce the provisions of the earlier la regarding the free selection of representatives by em ployees. Only one portion of this paragraph is significa for our purpose, and this reads as follows:

> "Nothing in this Act shall be construed to pr hibit a carrier from permitting an employee, i dividually, or local representatives of employe from conferring with management during workin hours without loss of time."

This language, and particularly the word "individ ally" has been pointed to as constituting a recognition individual rights. It is to be noted, however, that th proviso and indeed the entire paragraph is framed as prohibition against certain discriminatory acts on the pa of the carriers. To permit favored employees to conf with management freely and deny the privilege to othe would be a potent weapon of favoritism and a subtle mea for expressing it. Hence all employees were placed on equal footing in this regard. The legal right conferr was one exercisable as against the carrier and not again or in substitution for the conference rights of the collecti representative. The statute does not limit the conferenc mentioned in Section 2 Fourth to those involving disput regarding the interpretation or application of agreement Thus, if this language is construed as giving to the i dividual a right to confer with management and *there settle disputes* involving the interpretation or applicati

of agreements, there is no reason why the same right is not conferred to deal with management directly as to all disputes, even those regarding wages and terms of employment. As it was certainly not the purpose of Section 2 Fourth to limit the power of collective bargaining representatives as to disputes of this latter character, we do not understand how it can be considered as imposing a limitation upon the power of those representatives with reference to any disputes of any kind.

Section 3 of the amended statute, which deals with adjustment boards, differs in a number of respects from the original Section 3 as contained in the 1926 Act. Boards of Adjustment as created by agreement are still possible. (See Section 3 Second.) In the absence of such an agreement, however, disputes regarding the interpretation or application of agreements are now referable to the National Railroad Adjustment Board. Much of Section 3 First (Paragraphs (a) to (h) inclusive) deals with the organization and membership of the Board. Paragraph (l) deals with the selection and functioning of neutral referees to sit with divisions of the Board in case of a deadlock. Paragraphs (p) and (q) deal with judicial enforcement of awards. Paragraph (k) and Paragraphs (r) to (w), inclusive, refer to administrative details of the Board's operation. All these are new paragraphs whose inclusion was necessitated by the change from boards voluntarily established by agreement to a single board established by statute and having the power to issue decisions enforceable in court. They superseded provisions of Section 3 First of the 1926 Act which had a similar purpose in that they prescribed conditions under which boards of adjustment could be voluntarily established.

When we come to consider those provisions of the Act, however, which regulate the type of disputes to be considered by adjustment boards, the participants in such

disputes, the persons entitled to notice and hearing, and the methods of procedure, there is no substantial change. Section 3 First, Paragraphs (i) and (j) of the new Act are almost exact copies of Section 3 First (c) and (d), respectively, as found in the old. As we have seen, Paragraphs (c) and (d) in the 1926 Act were the only ones which added any element to the law with regard to the handling of disputes growing out of the interpretation or application of agreements which was not already present in the Transportation Act of 1920. Inasmuch as these paragraphs were incorporated into the Act of 1934, in substantially the same form, the conclusion is inescapable that the framers of the amended statute did not intend that any change should be made with regard to the subject matter treated in these paragraphs.

We conclude, therefore, that insofar as this type of disputes is concerned, the 1934 amendments were intended only to substitute a compulsory national adjustment board for local voluntary ones. This change was not intended to alter the basic rights of the parties with regard to the handling of such disputes either before or after they reached the board.

Summary as to Historical Development of Language of the Railway Labor Act. There can be no question but that the present Railway Labor Act contemplates a line of cleavage between disputes involving the making of collective agreements and those involving their interpretation and application. The same line was recognized in predecessor statutes as well as in the administrative scheme of adjustment in effect during the railroad administration, 1918-1920. Different means of handling are and have been established for the two types. It is respectfully submitted, however, that the existence of these differences does not establish any differ-

ence in Congressional purpose as to the rights of collective bargaining representatives in the handling of disputes. This court has held that the making of collective agreements is a matter of collective bargaining wherein the authority of the collective representative is supreme. It has further held, however, that the interpretation and application of such agreements is a matter of individual bargaining where the individual is supreme and the representative has no real authority in its own right. Such a conclusion cannot be drawn merely from the fact of a distinction drawn by the statute. There is nothing inherently unreasonable in concluding that while Congress recognized that there existed two types of disputes so essentially different in nature as to require separate devices for handling them, it still left the collective bargaining representative as the official spokesman for employee interests in both instances. Up to this point in the case, however, the court has rejected this possibility because it has found evidence of a contrary intent in the statute, and for this reason only.

It has been the purpose of this section of the brief to present to the attention of the court facts in connection with the legislative history and language of the Act which, we believe, were not before it at the prior hearing and which it is felt should receive serious consideration. We have shown that the division of disputes into two categories is not a recent development created by the Railway Labor Act for the first time, but that it dates back to the days of the railroad administration. At that time, different means of handling were provided, but in both, the collective bargaining representative not only had a place in its own right, but acted exclusively. No individual right to proceed was recognized. The same division and the same exclusive right of representation were perpetuated in the Transportation Act of 1920. It is apparent, there-

fore, that there is nothing intrinsic in the nature of a dispute involving the interpretation or application of a collective agreement which precludes the granting of exclusive authority to the collective bargaining representative or which is abhorrent to any conclusion that such a result might be intended by Congress. Certainly this was the exact intent of Congress when the Transportation Act was adopted.

If, therefore, we are to find in an act subsequent to the Transportation Act a purpose diametrically opposed to the one there expressed, we should do so only on a clear showing of such a change evidenced by the unequivocal language of such statutes. The present Railway Labor Act clearly contemplates no revolutionary change from the principles underlying the Railway Labor Act of 1926. It is in this last named statute, therefore, that we must find the evidence of such a change, if it is to be found anywhere. In the course of the above argument, we examined the 1926 Act in detail, and failed to find any such evidence. To the contrary that statute showed an intent to perpetuate the administrative agencies and the conference procedures of the earlier Transportation Act as well as an intent to impose the same rights and even greater duties upon collective bargaining representatives. It copied directly the key provisions dealing with the conference method of adjusting disputes. In addition, it made such conferences mandatory and directed its mandate to collective bargaining representatives. It adopted and continued the devices of voluntary adjustment boards. In the statutory provisions establishing the terms of the agreements by which such boards were to be established, there is no evidence of any far-reaching effort to transform the earlier concept of the collective bargaining representative as the party principally responsible for the adjustment of

these disputes or to alter its pre-existing powers with relation to them.

Certain provisions of the Railway Labor Acts of 1926 and 1934 have been pointed to as creating individual rights. Reference is made particularly to provision for notice of adjustment board hearings (contained in Section 3 First (d) of the earlier statute, and Section 3 First (j) of the later statute), and the provision of the 1934 Act regarding the right of the individual to confer with management (Section 2 Fourth). These, however, afford a slender basis for a conclusion that the individual right has been made superior to the collective right. At most, they permit the individual to be heard in his own behalf either in the conference or the adjustment board stage of a dispute. This does not mean, however, that he must be the prime mover in the statutory scheme. A right to confer does not necessarily include a right to adjust in conference. A right to be heard by an adjustment board does not necessarily contemplate a right to initiate cases. *A fortiori* neither justifies a conclusion that the individual right is to be exclusive of the collective bargaining representative. We conclude, therefore, that the role of the individual in such cases is a purely subsidiary one. The statute does not purport to gag him but neither does it attempt to give him rights superior to those of his collective bargaining representative. This, we submit, is the conclusion to which a further consideration of the legislative history and language of these statutes should lead this court.

II. THE UNDERLYING PURPOSE OF THE RAILWAY LABOR ACT WILL BE DEFEATED BY DENYING TO THE COLLECTIVE REPRESENTATIVE, AS SUCH, A RIGHT TO PROCEED IN THESE DISPUTES.

The underlying purpose of the Railway Labor Act is the protection of the public from the damaging effect of labor disputes between carriers and employees. As a means of accomplishing this end, the statute establishes a system of collective bargaining through representatives freely chosen. This system is intended to bring about voluntary settlements of disputes at issue, but in the event that efforts in this direction are not successful, various administrative devices are provided to supplement them.

It is clearly not the purpose of this statute to act in the interests solely of individual employees or of collective bargaining representatives. Any conferring of rights upon or denying them to either was done for the purpose of benefiting the general public. It may be reasonably presumed, therefore, that it was the intent of Congress that individual rights should be merged into collective rights wherever reasonably required as a means of securing the orderly adjustment of disputes.

In this section of the brief, we wish to point out to the court the characteristics of disputes regarding the interpretation and application of collective agreements, the complications which arise therefrom, and the existence of practical difficulties which often make individual adjustment of them impossible and render essential the interposition of collective bargaining representatives if a peaceful settlement is to be reached.

In endeavoring to envision the nature of disputes of this character, it would be easy to conclude that they usually involve a single employee or group of employees

whose number is so small as to be easily determinable. If this were indeed the fact, it might be reasonably felt that under such circumstances, the rights of individuals should be held to be paramount, that the services of the collective bargaining representative as such were not strictly necessary, and that such representative should be required to secure specific authorizations from the individual employees before being permitted to proceed. While some disputes do involve definite claims in behalf of one or very few employees, others are broader in scope, involve the rights of workers whose very identity is unknown at the outset, and raise issues which are important to the whole craft of employees. The requirement of specific authorizations under such circumstances will, we believe, render the peaceful settlement of many such disputes impossible and force the parties either into numerous and complicated legal actions or what is more probable, to a direct resort to their economic strength.

Collective bargaining agreements between carriers and the various crafts of their employees are complicated documents containing numerous rules which are in themselves equally complicated. "Scope" rules are universally included. These map out the types of work the performance of which is recognized as being the prerogative of the members of the craft. "Seniority" rules are also universal. These provide that the available work of the type performed by the craft is to be apportioned among its members in order of their seniority. The work of most crafts, however, varies from position to position, some requiring a higher degree of skill than others. Thus it is provided that an employee must not only have sufficient seniority to obtain and hold a desirable position but he must be qualified to perform the services incident to it. These are the "qualification" rules.

Disputes regarding the application of these rules are frequent. Let us consider a rather simple case where a carrier has assigned services covered by the scope rule of its agreement with one craft to a member of another craft. Under such circumstances, it is apparent that some one employee of the first craft was entitled to perform work but was denied that opportunity. The question is "Which one?" In any department of a railroad the number of employees in active service and the number on furlough varies from day to day. Under the facts stated, the senior furloughed employee in the craft whose agreement has been violated should have been in active service during each day of the period of violation. This, however, would not be the same individual during the whole period. It might well be that dozens of employees would occupy the position of No. 1 man on the furloughed list during this time and each would have a claim growing out of this one violation. The situation is complicated by the fact that the senior furloughed man on any given day might not be qualified to perform the duties in question and hence would have no valid claim, while the No. 2 man might be qualified. This fact must be considered. It might also be that the duties wrongfully assigned to the outside employee would actually have been performed by qualified workers of the craft whose agreement was violated and who were actually in service during the whole period, but performing less desirable jobs. These individuals, too, have claims. They in turn may well have displaced others junior in seniority to themselves who were as a result out of work entirely. Accordingly, it is entirely possible that the ramifications of a single simple violation of a collective bargaining agreement may be such that over a period of months substantially every employee in a large shop, office or station will have been adversely affected. The unions keep no employment record such as would inform them of either the

identity of the various claimants or the extent of their claims. It is apparent from what has been said above that even by the use of the complete employment records of the carrier, it would in many instances be difficult or impossible to determine with any real accuracy who had been damaged by the violation. If any practicable basis of settlement is to be reached in such a case, it would have to be by some loosely accurate rule-of-thumb method.

Under the decision of the court, the union before settling such a dispute, or submitting it to the Adjustment Board for a binding ruling, would have to secure personal authorization so to do from each individual who might be affected. Even if it were possible to determine who these individuals were, it is proverbially difficult to induce some people to sign any document which might affect their legal rights, however innocent the document may appear in the eyes of the lawyer. Accordingly, the securing of a 100 per cent authorization in a case such as our hypothetical example would be a tedious and sometimes impossible task. Authorizations from a part of the employees would probably prove to be of little value, as corporations against whom are asserted claims involving a number of persons are notoriously reluctant to settle them unless all persons interested are bound by the settlement. Hence, while a representative could, under the court's decision, settle such a dispute as this one insofar as the discontinuance of the violation in the future was concerned, it would be powerless to exact any penalty for past losses. The individual employes, each uncertain of the extent of his own claim (which is probably small in amount), will likewise be in no position to collect. As a practical matter, therefore, in situations of this kind, a requirement of specific authorizations before the collective representative can act while assuring to the individual a naked procedural right

to press his claim, will effectively deny him any opportunity of securing any recompense for the wrong suffered.

It will permit the carriers to violate their agreements with virtual impunity so long as the violation is such as to lead to such complicated results. More important still, it will probably leave such claims as unsettled disputes and as disturbing elements in the field of railroad labor relations.

The example picked out above for discussion is not an exceptional case. Many situations exist where numerous unidentified and virtually unidentifiable employees have claims arising out of the same dispute. This result follows where a claim is made that a single employee has been given an improper position on a seniority list. Where a man is No. 20 on such a list, for example, when he should properly be No. 150, there are 130 employees who may have suffered losses due to the improper classification of one man. The improper application of an overtime rule may involve numerous individual claims. The standard railway labor organizations have made an agreement with the carriers known as the Washington Job Protection Agreement, which provides for compensation for employees affected by consolidations. Claims under this agreement frequently involve hundreds of individual workers.

The above will, we believe, amply illustrate the difficulties inherent in any effort to adjust even simple appearing disputes if the collective bargaining representative is not to be permitted to proceed in its own right. The individual adjustment of claims arising from such disputes will be well nigh impossible. When the collective bargaining representative may act in its representative capacity, consolidate such claims for adjustment, provide a central agency which can, by agreement with the carrier, separate the genuine from the spurious and bring about a

reasonably just settlement by which the individual recoups his losses and the carrier disposes of all claimants in a single action, we submit that the cause of industrial peace is served.

For a quarter of a century of the recorded history of railroad labor relations, the organizations have performed the above named functions without question of their right so to do.

This period has been one of gradual establishment on the railroads of a system of orderly adjustment of controversies between men and management. That system has produced an era of industrial peace in the industry unparalleled by the experience of any other industry of comparable size. These results have been achieved not only by legislative evolution which has perfected the governing statutes, but by an evolutionary process within the industry itself which has perfected a spirit of cooperation without which no statute of this kind can succeed. This latter evolution has produced a situation where collective bargaining agreements are uniformly accepted as the basis of the rights of labor. By constant efforts on the part of the organizations, a considerable measure of uniformity in such agreements has been obtained. Uniformity in the terms of agreement, however, is of little significance unless accompanied by uniformity of interpretation. This, too, has been secured to a substantial degree by the efforts of the organizations in two ways, first, by insisting that the carriers interpret and apply similar provisions in their agreements in the same manner throughout the industry, and secondly, by discouraging the presentation by the organizations' own members of claims contrary to such interpretations. Neither task has been or is an easy one. Some carriers have been reluctant to concede a uniformity of purpose in various agreements. Many employees have insisted that their individual claims be pressed, however con-

trary they might be to nation-wide standards. In the face of these obstacles, however, uniformity has in large measure been achieved and has proved itself a stabilizing influence in labor relations.

The policing of collective agreements is one of the most vital of the functions heretofore exercised by collective bargaining representatives. An enormous number of claims are presented every day to union officials. The sifting of the meritorious from the baseless is one of their most difficult tasks. Where any individual or group believes himself or itself the victim of injustice, emotions are aroused which are such as to welcome suggestions of conflict rather than councils of moderation or compromise. Heretofore the authority exercised by the organizations has proved a salutary check on this tendency. If that authority is now held to be non-existent we anticipate a flood of disputes such as has never before been experienced. The National Railroad Adjustment Board is already overburdened with cases filed after careful scrutiny by the organizations. This burden must inevitably increase if that scrutiny is to be henceforth unavailing to bring about settlement.

Heretofore this court has held that the remedies provided by the Railway Labor Act are not exclusive, that the disgruntled employee may ignore them and bring action in the courts. (*Moore vs. Illinois Central Railroad Co.*, 312 U. S. 630.) If now the power of the organizations to settle disputes in conference and to submit them to the Adjustment Board is to be subjected to individual control, a field of potential litigation is opened up whose limits are difficult to predict. Such situations are soon recognized by those who anticipate personal gain to themselves from the prosecution of cases, and we may reasonably expect that the courts and not the collective bargaining processes or the administrative agencies of the Railway Labor Act will

soon become the normal mode for the settling of disputes regarding the interpretation and application of collective agreements. This field of law is technical and complicated, and it is inevitable that the courts of 49 jurisdictions will not agree in the results reached. In consequence, individual collective bargaining agreements designed to be applicable uniformly throughout the industry or at the very least throughout individual railroad systems, extending across many states, will have no settled interpretation anywhere beyond the limits of the state where they have been construed in a given manner.

If such results were truly essential to the preservation of vital individual rights, we would not complain. We believe, however, that the individual will in fact suffer substantial loss on his own part. We have pointed out above that many disputes result in claims which may be readily adjusted in the aggregate but are not susceptible to individual adjustment. The increased complications of the new system will bring delays and expenses of litigation, and uncertainty as to rights, which were avoided by the old. The right to proceed which would be thus established in the individual would therefore be an empty one having as little practical value to him as the ephemeral "right of contract" which was once considered to be a legal barrier to the establishment of any system of enforced collective bargaining. No one contends that the individual should be left at the mercy of a representative which might act in a discriminatory or arbitrary manner. This court has granted protection to those whom it considered as having been unjustly treated in other phases of the collective bargaining process (*Steele vs. Louisville and Nashville R. Co.*, 323 U. S. 192; *Tunstall vs. Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210) and similar relief is available to any who might be denied fair representation in the presentation of claims growing out of the interpre-

tation or application of collective bargaining agreement
The substantial rights of the individual may be thus pr
tected by governing the collective bargaining represent
tive in the exercise of its powers. It is not necessary
deny the existence of those powers in order to accompli
that result.

In summary, therefore, we submit that the regulator
scheme of the Railway Labor Act requires for its effecti
operation a recognized authority in the collective bargai
ing representative to proceed in its own right to adju
disputes regarding the interpretation or application
agreements. A denial of that right will produce no re
benefits to individual employees, will impair the effecti
ness of representatives as stabilizing influences in th
field, will deprive the carriers of any agency to which the
may go to secure a final settlement of many vexatious labo
controversies, and will bring about a general deteriorati
of relations between employees and management whi
will necessarily impair the paramount interest of the publi
in uninterrupted transportation.

We respectfully submit that these results already e
perienced or reasonably to be anticipated from the inte
pretation which has been given to the Railway Labor A
are inimical to the whole purpose of the statute and shou
not be maintained.

We recognize that the general purpose of any statu
is not controlling as to its interpretation where the la
guage and legislative history are such as to show that th
purpose was not in fact implemented. In the present cas
however, we have shown in the first section of this bri
that the words and history of this Act also point to a co
trary result. We have shown that the original Congre
sional scheme for the settlement of disputes of this kin
contemplated an exclusive power of adjustment in th
collective bargaining representatives. This scheme,

embodied in the Transportation Act of 1920, is not shown to have been modified in the successor statutes of 1926 and 1934. Any recognition which those later acts may have given to individual rights go only so far as to consider them as subsidiary and subordinate to those of the collective representatives. The right and duty to proceed toward an adjustment through the methods of conference and submission to adjustment boards provided by the Act is still primarily that of the collective bargaining representative.

Inasmuch as the conclusions of the court on the first hearing were contrary to those above expressed, we respectfully submit that the petition for rehearing should be granted, and the case should receive further consideration at the hands of the court.

Mr. Joseph Padway, General Counsel for the American Federation of Labor, has authorized us to state that this brief represents the position of that organization with reference to the issues involved in this case.

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